D.T.E. 98-32-A

Investigation by the Department of Telecommunications and Energy into the Settlement Agreement submitted by the ten investor-owned local distribution companies and the Marketer Group concerning the terms and conditions for unbundled gas distribution and supplier service.

I. INTRODUCTION

On July 18, 1997, the Department of Public Utilities, now the Department of Telecommunications and Energy ("Department"), directed the ten investor-owned natural gas local distribution companies ("LDCs")[(1)] to initiate an industry-wide collaborative process designed to develop a common set of principles and procedures for the comprehensive unbundling of LDCs' distribution services by November 1, 1998. In response to that directive, nine LDCs formed the Massachusetts Gas Unbundling Collaborative ("MGUC"). Beginning in September of 1997, all ten Massachusetts LDCs and other participants in the MGUC engaged in discussions designed to achieve the Department's objective of establishing, inter alia, a set of Model Terms and Conditions ("Model T&Cs") for those companies and for competitive suppliers serving customers within the service territories of those companies. On March 18, 1998, the MGUC filed a Status Report that summarized the progress of the MGUC, and the areas in which the participants required direction from the Department.

In response to the March 18, 1998, Status Report, the Department issued a Notice of Inquiry regarding the unbundling of services offered by LDCs. Order Commencing Notice of Inquiry and Seeking Comments, D.T.E. 98-32 (1998) ("NOI"). On June 8, 1998, the Department received final comments in D.T.E. 98-32. The comments addressed, inter alia, the feasibility of comprehensive unbundling for all LDCs by November 1, 1998. The majority of commenters maintained that the introduction of comprehensive unbundling for all classes of customers for all LDCs was not feasible by November 1, 1998. On July 2, 1998, the Department issued an order establishing a revised procedural schedule for comprehensive unbundling of LDCs' services by no later than April 1, 1999.

On July 10, 1998, the LDCs and the Marketer Group[(2)] (referred to, collectively, as the "Settling Parties") filed a Joint Motion for Approval of Settlement ("Motion for Settlement") and a proposed Settlement Agreement concerning Model T&Cs for unbundled gas distribution services ("Settlement Agreement"). The Motion and Settlement Agreement were docketed as

D.T.E. 98-32-A. On July 27, 1998, the Department issued an Order of Notice on this matter, amended by an Order of Notice issued on July 31, 1998, which notified the public that the Department would accept comments on the Settlement Agreement until August 10, 1998. Other participants in the MGUC, who did not join in the Motion, submitted

comments on the Settlement Agreement on or before August 10, 1998. The commenters include the following: (1) Office of the Attorney General ("Attorney General"); (2) Massachusetts Division of Energy Resources ("DOER"); (3) The Energy Consortium ("TEC"); (4) Associated Industries of Massachusetts ("AIM"); and (5) National Consumer Law Center on behalf of the Massachusetts Senior Action Council ("NCLC"). On August 21, 1998, the Settling Parties filed Joint Reply Comments ("Joint Reply Comments"). On August 11, 1998, AIM and the Competitive Suppliers filed a Joint Motion for Clarification [(3)] ("Motion for Clarification ") in D.T.E. 98-32, requesting the Department to clarify the date on which it intended the LDCs to implement the Model T&Cs. AIM and the Competitive Suppliers requested that the Department establish November 1, 1998 as the implementation date for Model Terms and Conditions. However, in a Joint Response to the Motion for Clarification ("Joint Response"), the LDCs contended that it would be impossible to implement the Model T&Cs by November 1, 1998. The LDCs asserted that the Department should establish April 1, 1999 as the date for implementation of comprehensive unbundling of LDC services, in accordance with the time line established the Department's July 2, 1998 Order. This Order sets forth the Department's findings and decisions concerning the Settlement Agreement and the Joint Motion for Clarification.

II. DESCRIPTION OF SETTLEMENT AGREEMENT

The Settlement Agreement is intended to resolve issues concerning certain of the terms and conditions for service by the distribution companies and competitive suppliers (Settlement Agreement at 1). The Settlement Agreement resolves some, but not all, issues relating to a standardized nominations process and curtailment policies and procedures (id.). The Settlement Agreement assumes a structure for the Model T&Cs comprising 25 subject matter sections and three appendices. The Settlement Agreement proposes the adoption of 17 sections and one of three appendices. The Settling Parties agree to the following sections: 1.0 Rates and Tariffs; 2.0 Definitions; 3.0 Character of Service; 4.0 Gas Service Areas and Designated Receipt Points; 5.0 Customer Requests for Service from Company; 6.0 Customer Installation; 7.0 Company Installation; 8.0 Quality and Condition of Gas; 9.0 Possession of Gas; 10.0 Company Gas Allowance; 14.0 Billing and Security Deposits, 18.0 Discontinuance of Service; 19.0 Operational Flow Orders and Critical Days; 20.0 Force Majeure and Limitations of Liability; 22.0 Taxes; 23.0 Communications; 25.0 Customer Designated Representative; and Appendix B (id. at 2-4).

The Settling Parties have agreed to most provisions of sections 11.0 and 12.0 regarding Daily Metered Distribution Service, and Non-Daily Metered Distribution Service. The subsections that remain unresolved are 11.3.2 and 12.3.3, which concern standardized policies and procedures for the communication of transactional information between the LDC and the competitive supplier (id. at 2). The Settling Parties have agreed that a subgroup of the collaborative will be established to address these issues (id.). The Settling Parties have further agreed that the same group will address Section 12.2, the development and availability of consumption algorithms (id. at 3). The Settling Parties agree that section 13.0 regarding Capacity Assignment requires action by the Department

(id.). The Settling Parties have agreed to section 15.0 regarding Default Service, subject to review based on the Department's determination on capacity assignment (id.). The Settling Parties note that Section 16.0, regarding Peaking Services, requires Department action (id.). Section 17.0 regarding Interruptible Transportation, has not been settled but will be the subject of further discussion and action by Collaborative participants (id.). The Settling Parties have agreed to section 21.0, regarding curtailment, with the exception of section 21.5; a Collaborative subgroup will be established to resolve policies regarding curtailment policies and procedures (id.). The Settling Parties have agreed to section 24.0, regarding Supplier Terms and Conditions, with the exception of

subsections 24.5.3, 24.5.4, and 24.6.3, which may be reexamined by the Settling parties and revised by Collaborative participants, pending the development of the capacity assignment provision (id. at 3-4). Regarding section 24.9, the Settling Parties agree that the standardized Supplier Service Agreement Form, will be pursued once the outstanding issues embodied in the Model T&Cs have been resolved (id. at 4).

Finally, regarding Appendix A, Schedule of Administrative Fees and Charges, the Settling Parties have agreed that action is required by the Department prior to further discussion and action by the Collaborative. Regarding Appendix C, Standard Customer Request for Service Form, the Settling Parties agree that this Appendix will be developed by a Collaborative Working Group and submitted to the Department for informational purposes (id.).

In summary, the Settlement Agreement does not address issues relating to the final policies and terms for customer access to upstream pipeline capacity and the long-term responsibilities of the LDCs associated with providing merchant service in a competitive gas industry (Motion at 1). Specifically, the Settlement Agreement does not address issues relating to the following: (1) upstream capacity assignment; (2) access to downstream supplemental services**;** and (3) interruptible distribution service (Settlement Agreement at 1).

By entering into the Settlement Agreement, the Settling Parties agree that the Model T&Cs approved by the Department shall serve as the basis for LDC compliance filings (id. at 4). The Settling Parties further agree that individual LDCs may propose deviations from the Model T&Cs approved by the Department in such filings, but must fully support any material deviations from the Model T&Cs (id. at 4-5). By entering into this Settlement Agreement, no party waives its right regarding such proposed deviations from the Model T&Cs approved by the Department, nor are they precluded from addressing or raising issues not resolved by the Model T&Cs (id. at 5).

III. COMMENTS ON THE SETTLEMENT AGREEMENT

A. Attorney General, DOER and AIM

The Attorney General, DOER, and AIM express concerns related to timing, contending that it is premature for the Department to approve the Settlement Agreement because of unresolved critical issues, including capacity assignment, cost responsibility and the lack of a rate for interruptible transportation of gas (Attorney General Comments at 2; DOER Comments at 2; AIM Comments at 1). The Attorney General believes that current Federal Energy Regulatory Commission ("FERC") rulemaking proposals[(4)] may necessitate a review of the provisions of the Model T&Cs as they apply to and affect intra-state transactions (Attorney General Comments at 2). DOER and AIM insist that various emergency planning measures and access to downstream asset service must be part of the final agreement (DOER Comments at 2; AIM Comments at 1). Notwithstanding their reservations, the Attorney General, DOER and AIM state that they would not object to the Department approving the Settlement Agreement on an interim basis for use during the upcoming 1998-99 heating season, subject to certain conditions[(5)] and caveats.[(6)] (Attorney General Comments at 2; DOER Comments at 2; AIM Comments at 1). However, the Attorney General and AIM do not offer detailed analysis of the partial Model T&Cs and reserve the opportunity to submit detailed commentary on various provisions after comprehensive Model T&Cs and/or individual compliance filings are proffered to the Department (Attorney General Comments at 2; AIM Comments at 1). The Settling Parties did not address the concerns expressed by the Attorney General, DOER and AIM in their Joint Reply Comments.

B. TEC

TEC believes that it is premature to approve the Settlement Agreement because of the number of issues that remain outstanding, such as interruptible distribution service and the need to address more fully some of the existing provisions of the Model T&Cs (TEC Comments at 1). TEC raises three specific concerns: (1) system reliability may be threatened by applying "operational" penalties only if the supplier fails to deliver 70 percent of its contract obligations; (2) every customer should have a right to receive at each billing cycle its supplier's performance log; and (3) transportation customers should have the right to return to LDC sales service under certain circumstances.

TEC also cites the FERC rulemaking proposals that, among other things, seek to implement changes in interstate pipeline procedures relating to operational flow orders, imbalance tolerances, penalty levels, and receipt point flexibility, as another reason for the Department to defer its approval of the partial Model T&Cs (id. at 2). Like the Attorney General and AIM, TEC reserves the opportunity to address various issues in detail after a complete Model T&Cs document and/or individual compliance filings are submitted to the Department (id.).

In response to the concerns expressed by TEC, the Settling Parties maintain that TEC has presented no issue or proposal that is sufficient to warrant rejection of the Settlement Agreement (Joint Reply Comments at 3). The Settling Parties contend that the agreed-upon sections of the Model T&Cs (1) impose substantial and effective disincentives to non-performance; (2) provide suppliers with the flexibility to meet the needs of their customers on an aggregated basis, such that provision of a "performance log" at each

billing cycle would impose a needless and significant administrative burden upon the LDCs; (3) do not presuppose the default service framework that will ultimately result from the Department's capacity disposition decision; and (4) are unlikely to be irreparably affected by FERC's proposed NOPR (Joint Reply Comments at 3-8). The Settling Parties suggest that it would be appropriate to reassess the Model T&Cs if and when the FERC institutes any changes in interstate policies affecting the Model T&Cs (id. at 8 n.5).

C. NCLC

NCLC contends that the "risks associated with gas unbundling for small and vulnerable customers are high and the potential rewards are low" (NCLC Comments at 2). NCLC urges the Department to defer gas unbundling until after retail electric competition has been in place long enough to assess the impact of deregulation on residential consumers, although it admits that this assessment is not likely to be available for some years to come (id.).

NCLC has commented on numerous provisions of the Model T&Cs. Its commentary generally falls into three categories: (1) provisions that it believes require clarification or refinement, including special contracts, rates for distribution service, definition of customers, allocation of liability for damage to LDC property, charges for meter testing and unmetered use, standard complete billing service, restoration of service after proof of diversion, curtailment, and customer service; (2) provisions that it contends need substantive change, including force majeure, designated representative, default service/definitions, circumstances requiring written applications from residential customers, payment plan for delinquent customers, economic denial of service, customer indemnification of LDC, gas quality standards, leakage, anti-slamming and cramming provisions, customers' obligations upon disconnection of service, and suppliers' obligations; and (3) provisions that it suggests require delay of the approval of the Model T&Cs, including fees and charges and supplier licensure (NCLC Comments at 2-10).

As to NCLC's concerns about provisions requiring clarification, the Settling Parties generally agree with NCLC's interpretation of the provisions in question and maintain that no further detail is necessary (Joint Reply Comments at 9, 14, 17-18, 19, 20, 21). The Settling Parties point out that one provision in question is controlled by statute (Joint Reply Comments at 9). Furthermore, in two cases, the Settling Parties contend that NCLC has misinterpreted the purpose of the provisions in question (Joint Reply Comments at 9, 22 n.7). Finally, the Settling Parties point out that the majority of the provisions that cause NCLC concern are consistent with Department precedent (Joint Reply Comments at 14, citing Bay State Gas Company, M.D.P.U. No. 348, at § 4D; COM/Gas, M.D.P.U. 248, at § 3E; 17, citing Model Terms and Conditions for the Electric Industry, D.P.U. 97-65, Attachment I, section 8B (1997); 18, citing M.D.P.U. No. 248, at § 4K; Boston Gas Company, M.D.P.U. 991, at § 8C; 19, citing D.P.U. 97-65, at 53-54 and Attachment II, § 8A (1997)).

In its response to NCLC's suggestions regarding provisions requiring substantive changes, the Settling Parties contend that the provisions in question are consistent with Department precedent (Joint Reply Comments at 10, 12, 14-15, 16, 17, 18, 20, 24), standard commercial practice (id. at 10), LDC terms and conditions currently in effect (id. at 10) and with the rights and responsibilities that are inherent in the availability of customer choice (id. at 11,23). The Settling parties further explain that NCLC has misinterpreted the provision regarding gas quality standards (id. at 18) and that NCLC's suggestion regarding a customer's obligations upon disconnection of service is beyond the scope of the Model T&Cs (id. at 21).

NCLC further contends that until certain "important" provisions are resolved, such as fees and charges and supplier licensure, the "overall approval" Model T&Cs should await the filing of the proposed Appendix A on fees and charges (NCLC Comments at 3) and a statutory amendment on supplier licensure (id. at 8-9). The Settling Parties maintain that fees and charges for billing services or for customer information, enrollment, and aggregation services cannot be established until the provisions for such services have been approved by the Department (Joint Reply Comments at 25) and that suppliers' fees are beyond the scope of the Model T&Cs (id.). The Settling Parties note that section 24.3.1 on supplier requirements was developed consistent with Department precedent and that supplier licensure preconditions are beyond the scope of the Model T&Cs (id. at 22).

IV. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in a filing and other record evidence to ensure that the settlement is consistent with Department precedent and the public interest. Massachusetts Electric Company, D.P.U. 96-25, at 20 (1997); The Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996); Massachusetts Electric Company, D.P.U. 96-59, at 7 (1996); Western Massachusetts Electric Company, D.P.U. 96-8-CC, at 6 (1996); Commonwealth Gas Company, D.P.U. 94-128, at 6 (1994); Barnstable Water Company, D.P.U. 91-189, at 4 (1992). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Massachusetts Electric Company, D.P.U. 96-25 at 20 (1997); Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

V. ANALYSIS AND FINDINGS

The Department notes that the Model T&Cs in the proposed Settlement Agreement are not comprehensive. However, the Settlement Agreement covers most of the T&Cs that must be in place in order for unbundling to proceed in an efficient manner. The Settling Parties have indicated that the discussions regarding the T&Cs continue and that remaining sections of the T&Cs will be developed after the Department issues its decision on capacity allocation in D.T.E. 98-32. The Department will undertake a

comprehensive review of the T&Cs following the MGUC's submission of the balance of the T&Cs.

A. Analysis and Findings Regarding the Comments of the Attorney General, DOER, and AIM

The Department notes that the comments received from the Attorney General, DOER, and AIM (unlike those from TEC and NCLC) do not raise any objections or concerns to any of the specific elements of the proposed T&Cs. Nevertheless, the Attorney General, DOER, and AIM have expressed concern regarding the incomplete nature of the proposed T&Cs and regarding the need to resolve issues such as capacity assignment, cost responsibility, and interruptible transportation tariffs. In addition, DOER discusses the need to address emergency planning measures.

Furthermore, the Attorney General cites the recent notices of proposed rulemaking ("NOPR") and inquiry ("NOI") issued by the FERC on aspects of its short-term and long-term regulation, respectively, of natural gas transportation services. The Attorney General suggests that FERC's actions may necessitate a review of the Model T&Cs. The Department recognizes the strong likelihood that it will be necessary for it to review this jurisdiction's regulations and tariffs once the FERC issues its final rules governing interstate natural gas transportation services. However, the Department's awareness of the necessity of future review does not preclude any action that the Department may choose to take at this time regarding the Model T&Cs.

The Department finds that the proposed Model T&Cs are consistent with Department precedent and the public interest, as well as with the terms and conditions currently in effect. Accordingly, the Department grants the Motion for Settlement and approves the Settlement Agreement and the partial Model T&Cs incorporated therein. Furthermore, the Department notes that it will undertake a comprehensive review of the T&Cs following the MGUC's submission of the balance of the T&Cs.

B. Analysis and Findings Regarding the Comments of TEC

Regarding the operational penalties, the Department notes that several sections of the Settlement Agreement provide for daily, monthly and seasonal penalties, operational flow orders and termination conditions that, by themselves or in combination with the potential for damage actions, provide significant financial incentives for suppliers to honor their contractual obligations and promote system reliability.[(7)] Therefore, the Department concludes that the proposed tariff provisions are adequate to assure reliable supplier performance and that additional constraints are not warranted.

In response to TEC's concerns regarding billing cycle performance logs, the Settling Parties represent that customers can request a supplier's performance logs as a condition

for contracting with a competitive supplier (Joint Reply Comments at 5). Therefore, although the Department intends to maintain consumer protection measures under unbundled service, the Department will not impose significant additional administrative burdens on LDCs, such as billing-cycle performance logs, when the proposed new regulatory requirements are unjustified.

As to the right of customers to return to LDC sales service, the Department notes that the existing transportation tariffs address this issue and the Model T&Cs affecting default service have not yet been developed by the Collaborative. Consequently, it is premature for the Department to impose conditions concerning a customer's return to regulated sales service.

C. Analysis and Findings Regarding the Comments of NCLC

The Department has considered each of NCLC's assertions that a number of sections require clarification, delay or amendment to provide additional elements of consumer protection. In addition, the Department has reviewed the Joint Reply Comments that were submitted by the LDCs and the Marketer Group in response to the comments provided by NCLC, TEC, DOER, and the Attorney General.

In some instances, including provisions under sections 14, 15, 21, and 24 of the Model T&Cs (regarding information provided to suppliers, default service and curtailment), NCLC has questioned issues that the Settling Parties have explicitly identified as subjects for further discussion.[(8)] The Department finds that addressing these matters now would be premature and counter-productive to the collaborative process.

In sections 1, 2, 3, 5, 6, 7, 10, 14, 18, 20, 24 and Appendixes A and C (special contracts, default service, customer/beneficiary obligations, service applications, billing and payments, landlord/tenant responsibilities, service resumption, force majeure, account transfers, fees and charges, and customer information), the conditions are consistent with Department precedent. Furthermore, NCLC's concerns regarding sections 2 and 14 (liability and billing) relate to Model T&Cs that are consistent with established Department policy. For the foregoing reasons, the Department finds that no changes are warranted at this time.

NCLC's concerns regarding certain elements of sections 15 and 24 (default service, supplier obligations, and supplier registration), should be at least partially allayed by the consumer education program that the Settling Parties represent will be developed and implemented in tandem with the gas unbundling programs. Furthermore, the Department directs gas suppliers to consider standards and requirements regarding licensure and registration similar to those applying to electric marketers. As to NCLC's concerns regarding the provisions of sections 1, 10 and 14 (customer liability and billing service), the Department believes that each provision in question is clear and do not convey the meaning suggested by NCLC's comments. Accordingly, the Department finds that no clarification is required.

The reservations expressed by NCLC regarding certain provisions of sections 8 and 24 (quality standards and changing supplier service) are resolved by other provisions of the Model T&Cs. Furthermore, the Department believes that NCLC's concerns regarding sections 5 and 7 (service applications and meter testing) will be assuaged by the Department's requirement that each LDC submit its own proposed terms and conditions for the Department's approval and by the customers' right to appeal LDC actions to the Department. Other NCLC concerns address issues, such as customer obligations to suppliers after termination of service, that fall outside of the scope of the Model T&Cs.

The Department has considered NCLC's request for a delay of the approval of the Model T&Cs because certain provisions, including elements of sections 1, 15, 18, 24 and Appendix A (fees and default service) have not been described. The outstanding, unresolved provisions of the Model T&Cs do not mandate the delay of the Department's approval of the present, completed portions of the Model T&Cs. The collaborative parties have been engaged in orderly, intensive discussions in which a number of issues have been identified as subjects for further discussions. The Department's adoption of the Settling Parties' proposed T&Cs is entirely consistent with the Department's recognition that there still are terms and conditions yet to be resolved.

VI. MOTION FOR CLARIFICATION

A. Introduction

On August 11, 1998, AIM and the Marketer Group (also referred to, collectively, as the "Petitioners") filed a Joint Motion for Clarification ("Motion"), requesting the Department to clarify the date on which it intended the LDCs to implement the Model T&Cs (Motion at 3). The Petitioners claim that, although the Department was clear on the implementation date for unbundled rates, it was silent as to the implementation date for the Model T&Cs (id. at 3). Therefore, the Petitioners request that the Department clarify its Order of July 2, 1998 by establishing a November 1, 1998 implementation date for the Model T&Cs (id. at 4).

B. Positions of the Parties

1. AIM & the Marketer Group

The Petitioners assert that a delay in the implementation date past November 1, 1998 will be detrimental to hundreds of customers, who, without the implementation of Model T&Cs on November 1, 1998, will be denied access to the competitive market this heating season and, therefore, also will be denied access to enhanced savings and services (id. at 4). In support of their assertions, the Petitioners cite to the LDCs' Final Comments in D.T.E. 98-32 in which the LDCs suggested that the mandatory capacity release program, including the new Model T&Cs, be implemented as early as November 1, 1998 for those customers who are currently eligible to choose transportation service under programs currently in place for each LDC (id. at 2, citing Final Comments - Eight LDCs at 32).

2. The LDCs

On August 18, 1998, the ten LDCs filed a Joint Response to the Motion for Clarification. In their response, the LDCs urge the Department to reject the Motion. For the reasons set forth below, the LDCs argue that the November 1, 1998 implementation date for the incomplete Model T&Cs is not feasible and would unnecessarily undermine the ability of the LDCs to implement a well considered and coordinated transition to a competitive market structure (Joint Response at 7).

The LDCs' reasons in support of their contention that the Model T&Cs cannot be implemented by November 1, 1998 are as follows: (1) the T&Cs, cannot be implemented until the details of capacity release and electronic data exchange procedures are developed (id. at 4); (2) it is not possible to implement the agreed-to portions of the T&Cs, without the necessary changes in systems and operating procedures that will be adopted as part of the comprehensive unbundling program (id. at 5); (3) a capacity disposition program must be identified by the Department to enable the LDCs and other participants to develop the T&Cs for Utility Sales/Default Service and to draft a Supplier Service Agreement (id. at 6); and (4) the different levels of experience with the provision of transportation services could lead to different implementation dates for the various LDCs (id. at 6).

C. Analysis and Findings

The Department recognizes that the proposed T&Cs are incomplete. In order to develop complete T&Cs, the Collaborative participants need the Department's direction on capacity assignment, completion of electronic data exchange procedures, adjustments to systems and operating procedures, and time to implement the final T&Cs through individual compliance filings.

The Department notes that significant transportation service and supplier choice is currently available to end users even in the absence of implementation of the Model T&Cs on November 1, 1998. All LDCs currently have approved terms and conditions for transportation service to the commercial and industrial customer classes. Moreover, implementation of these partial Model T&Cs at this time would have no significant effect on the availability of supplier choice to the smallest users of natural gas. Significantly expanded supplier choice requires the development and approval of the remaining terms and conditions, as well as consumer education and the assurance of continued consumer protections. All parties have noted, in their comments, that the MGUC will be addressing these issues in the immediate future.

The Department adopts herein the provisions of the Settlement Agreement that are completed thus far. The Department finds that it is not appropriate to order the implementation of the Model T&Cs by now, given that the Model T&Cs are not complete and that the LDCs do not have the means to implement the Model T&Cs now (Joint Response at 5-7). The MGUC has resumed its meetings to discuss and attempt to resolve the remaining T&Cs. These T&Cs can be submitted to the Department for

approval to enable the LDCs to submit final compliance filings prior to April 1, 1999. Implementation of comprehensive T&Cs by April 1, 1999 will promote the Department's goal for unbundling and satisfy the public interest in assuring that the LDCs have sufficient time to implement appropriate changes in their operating systems and operating procedures.

VII. ORDER

Accordingly, after due notice and consideration, it is

ORDERED: That the Joint Motion for Approval of Settlement, filed on July 10, 1998, by the LDCs and the Marketer Group, be and hereby is granted; and it is

FURTHER ORDERED: That the Settlement Agreement and the Model Terms and Conditions incorporated therein, be and hereby are approved; and it is

FURTHER ORDERED: That the Joint Motion for Clarification filed by AIM and the Competitive Suppliers on August 11, 1998 is denied and the Department instead establishes April 1, 1999 as the effective date for the Model Terms and Conditions; and it is

FURTHER ORDERED: That prior to April 1, 1999, the LDCs shall submit individual compliance filings for Terms and Conditions consistent with the Model Terms and Conditions approved in this Order and shall indicate and support any provisions that are not consistent with the Model Terms and Conditions.

By Order of the Department,

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Janet Gail Besser, Chair

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Paul B. Vasington, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing

of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. The ten investor owned LDCs are: Bay State Gas Company, The Berkshire Gas Company, Blackstone Gas Company, Boston Gas Company, Colonial Gas Company, Commonwealth Gas Company, Essex County Gas Company, Fall River Gas Company, Fitchburg Gas and Electric Light Company, and North Attleboro Gas Company.

2. The Marketer Group consists of AllEnergy Marketing Company, L.L.C., EnergyEXPRESS, Inc., Energy Vision, Enron Energy Services Inc., Utilicorp. United, Inc., and Statoil Energy, Inc.

3. The Competitive Suppliers who filed the Joint Motion for Clarification are AllEnergy Marketing Company, L.L.C., Enron Energy Services Inc., EnergyEXPRESS, Inc., Energy Vision and Utilicorp. United, Inc.

4. Regulation of Short Term Natural Gas Transportation Services, FERC Docket No. RM98-10 (July 29, 1998).

5. The Attorney General requests that a mandatory capacity distribution policy be established before the Model T&Cs are approved on an interim basis (Attorney General Comments at 2 n.1).

6. DOER believes that interim approval of the Model T&Cs may prove to be imprudent and worse than a delay until April, 1999 (DOER Comments at 2).

7. See the proposed T&Cs, Sections 11.6 (Daily Metered Distribution Service--Balancing), 12.6 (Non-Daily Metered Distribution Service--Balancing), 19 (Operational Flow Orders and Critical Days) and 24.3 (Supplier Terms and Conditions--Supplier Requirements and Practices).

8. On September 30, 1998, the Department received a letter indicating that the MGUC has established six sub-groups to work on the outstanding implementation issues, such as consumption algorithms, standardized nomination procedures, and electronic data exchange protocols.[(9)]

9. Robert J. Keegan letter (September 30, 1998) to Chair Besser and Commissioners, on behalf of the ten investor-owned local distributions companies sponsoring the MGUC. - '